

## **The Maryland Board of Pharmacy Public Minutes - September 16, 1998**

In the absence of President David Russo, W. Irving Lottier, Secretary, presiding called the public meeting to order at 8:45 A.M. In attendance were Commissioners Wayne Dyke, Barbara Faltz Jackson, Melvin Rubin, Laura Schneider, Donald Yee, Raymond Love, Ramona McCarthy Hawkins, Rev. William Johnson and Jeanne Gilligan Furman; Board Counsel, Paul Ballard; Board Staff, David Denoyer, Cheryl Cresic, Pamm Wiggin and Executive Director Norene Pease. Commissioners David Russo and Stanton Ades were excused and were absent from the meeting.

Guests present include:

Dorothy Levi  
Howard Schiff, MPhA  
Bonnie Rettew, Dupont  
Bob Chang, Drug Control  
Vicki Gruber, Evans & Stierhoff  
Sam Thomas, Knoll Pharmaceutical  
Nathan Gruz, MPhA  
Franklin Goldstein, NACDS  
Tony Tommasello, PEAC  
Jack Freedman, Drug Control  
Marvin Freedenberg, NeighborCare  
Leslie Walthall, Univ. Of MD Pharmacy Student

**Secretary Lottier requested that any member of the Board with a conflict of interest relating to an item on the agenda should notify the Board at this time.**

There were no conflicts reported.

### **Approval of Minutes**

A motion was made by Barbara Faltz Jackson and seconded by Raymond Love to approve the August 19, 1998 Board minutes as written. All Board members approved.

### **Election of At Large Member of the Executive Committee**

Norene Pease reported that since the Pharmacy Board members have increased from 8 members to 12 members, an Executive Committee had been created to have an executive decision making body to whom decision making for the full Board may be delegated if the full Board votes to do so. An example of the delegation of decision making authority for the Board is authorizing the Committee to approve legislative position papers developed on behalf of the Board during the Legislative Session when time does not permit full Board review prior to a scheduled hearing.

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Other activities of the Committee would include interfacing with the Dean and other faculty representatives from the School of Pharmacy, interfacing with DHMH officials on clinical and personnel issues and interfacing with state and national pharmacy associations.

Mr. Lottier asked for nominations for the at large position on the Committee since the Board President and Secretary are already members. Barbara Faltz Jackson nominated Melvin Rubin and Raymond Love seconded the nomination. Ms. Jackson stated Mr. Rubin is experienced in the Board past and present, he is an experienced professional and would be an outstanding representative for the Executive Committee.

Raymond Love moved to close the nomination seconded by Donald Yee. All Board members were in favor of the motion.

W. Irv Lottier stated that Melvin Rubin is elected to the Executive Committee for the period of one year.

Counsel of Boards Legislative Proposal on Job Classifications and Grades - Barbara Faltz Jackson and Norene Pease reviewed with the Board the legislative proposal to enable Boards to set salary levels for all staff in a model that is similar to that of the Board of Physician Quality Assurance where the Board and the Department jointly establish job classifications and grades for employees. Raymond Love moved that the Board of Pharmacy endorse the legislative proposal of the Counsel of Boards to enable the Boards to set classification and grade levels for their employees. The motion was seconded by Barbara Faltz Jackson and the full Board unanimously approved the motion.

Executive Director's Report - Norene Pease reported that the Department had contacted the Dental, Occupational Therapy (OT) and Pharmacy Boards to inform them that there had been a determination that there is not adequate space in the Benjamin Rush and Vocational Rehabilitation Buildings to accommodate and Board and the Board of Physician Quality Assurance. The Dental OT and Pharmacy Board have not been appraised of the availability of other alternative space at Spring Grove by the Department. Dental, OT and Pharmacy have suggested the possibility of Dental and OT moving into the Rush Building and Pharmacy sharing the first floor of the Bland Bryant Building with the Spring Grove Pharmacy.

NABP/AACP Meeting Status - October 22-24, 1998 - All members of the Board have been registered by Board staff to attend the conference. Board members were asked to advise staff if they are unable to attend any part of the conference so that staff may make the space available to students who have been Board interns.

Technology Show - December 9-10, 1998 - Jeanne Furman is working with Tamarra Banks to

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encourage pharmacy vendors who have future oriented robotics/automation to showcase to participate in the pharmacy display of practices past and future. Board members should contact Jeanne or Tamarra with companies that would be interested in participating.

Bi-Monthly Program Report to the Secretary DHMH - Ms. Pease reported the following items to the Secretary: formulation of the Board's Task Force to examine pharmacy support personnel, development of a request for proposals for a pharmacist rehabilitation committee, the District II meeting of Boards and School of Pharmacy and the status of the Code of Conduct and Electronic Transmission Regulations.

Mr. Lottier introduced our new Legislative Officer, Pamm Wiggin, who is an attorney and a nurse. Ms. Wiggin has been in America for 16 years. She trained as a nurse in the United Kingdom and specialized in psychiatry. She also is an attorney, with experience in pharmaceutical liability. Ms. Wiggin stated she is looking forward to the opportunity to work for the Board and the health care area. Mr. Lottier welcomed Ms. Wiggin aboard.

### **Board Counsel's Report**

Paul Ballard stated that he will have his legal intern research if pharmacists licensed in Maryland can dispense prescriptions written by a prescriber who is a non-Maryland licensee/non-U.S. licensee. Mr. Freedman of Drug Control stated it is acceptable to dispense prescriptions from a licensed physician in the U.S., but foreign prescriptions from a non-U.S. licensed physician would not be acceptable. Mr. Freedman also stated that usually physicians on the Border are licensed in both jurisdictions.

Memorandum of Understanding - Pharmacist Compliance Officer - Paul Ballard, Board Counsel, stated the Attorney General's Office position on the memorandum of understanding regarding the pharmacist compliance officer. Mr. Ballard stated if the purpose of the MOU is to pay the employee more than is allowed by the State Pay Plan for that classification, then the arrangement would circumvent the intent of the state merit system. Mr. Ballard states in his opinion the MOU would not benefit the University of Maryland and the pharmacist compliance officer's services would not be controlled by the University, which would violate the State personnel laws. Mr. Ballard also advised that the MOU raises potential ethical issues such as conflicts in interest between the School of Pharmacy and the Board since the PCO would be responsible for the regulation of the practice of pharmacy and could be viewed as potentially influencing policy decisions of the Board which may affect the school and its preparation of pharmacists for practice.

Norene Pease stated that the average length of time the Board has retained a PCO has been eighteen months due to the salary scale being below market. For more than two years, Ms. Pease has asked for the Department's advice on how to increase the Pharmacist Compliance Officer's

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(PCO) Compensation and has been told that the Department might request an adjustment to all pharmacist salaries sometime in the future.

The Board has engaged in joint ventures with the University and there is a relationship and ongoing work such as the poison information center media campaign, the development of a formulary committee on equivalent drug products, and the advancement of pharmacy practice and patient access through collaborative practice and medication administration.

Ray Love stated that a relationship between the PCO and students is beneficial to the School the Board and the public in that students have first hand learning experiences relating pharmacy law and its practice implications. Additionally the School and the Board are working on joint projects to prevent student drug and alcohol misuse, (prior to licensure) and to develop relevant student practice and continuing education courses that prepare practitioners for all types of practice. Jeanne Furman was concerned with the Board having a person on the University payroll that it might cause a conflict with the examination of students.

Melvin Rubin commented that the PCO does not make policy or disciplinary decisions only members of the Board participate in decision making votes. The Board contemplated the degree of severity of potential problems encountered should the Board pursue the MOU against the advise of counsel. The Board suggested that staff further research similar cases reviewed by the Ethics Commission and review other MOUs in the Department involving clinicians in investigatory and other roles and advise the Executive Committee of the outcome of the research.

Raymond Love moved to refer the matter to the Executive Committee for a final decision seconded by Barbara Faltz Jackson. All Board members approved the action.

### **Committee Reports**

Licensing Committee - Wayne Dyke reported that the Law and Laboratory Examination will be given on Tuesday, October 13, 1998. He stated this will be the last time the Board of Pharmacy will be giving the law examination developed by the Board. Subsequently the Board will give the examination that has been developed by NABP. The Board will continue to give the Laboratory Examination developed by the Board. This exam will include about 40 candidates and the exam consists of one law session and one laboratory session. Volunteers are needed to be proctors. Mr. Dyke stated that the Board will be following the same format as the spring exam. The licensing Committee will meet on Friday, September 18, 1998 to review the credentials of examinees.

Reciprocity - Mr. Dyke reported that there were 20 reciprocity candidates and a motion was made by Wayne Dyke and seconded by Barbara Faltz Jackson, that all candidates be approved for

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licensure with the exception of Alemayehu Maru, Jill Pickard and Theodore Trapeni, who will be licensed when the Board receives their Oral English competency certificates. The motion was approved. The candidate names are: Janet Bender, Mary Binghay, Royce Burruss, Edward Cassada, Robert Cimorelli, Michael Cooper, Herbert Goerres, Cynthia Kaser, Maura Lavelle, Barbara Liu, Alemayehu Maru, Stacey Mohammed, Shannan Molnar, Jill Pickard, Michael Rofsky, John Semcheski, Thomas Sparks, Leatrice Martin-Stebbins, Theodore Trapeni and Lynel Wright.

### **Legislative Committee**

Strategic Planning Meeting Report - The Strategic Planning Group met on September 10, 1998. Alan Friedman from Kaiser Permanente joined the group representing managed care pharmacy. The group decided to establish a committee comprised of representatives from community, managed care and chain pharmacy, and the school of pharmacy to meet and make recommendations to the Strategic Planning Group on a pharmacy coalition for the state. The group will make recommendations on the following: 1. What authority such a coalition would need to have? 2. Resource needs in terms of staffing and budget and 3. Options for how to fund such a coalition. The following individuals were to be approached to participate on the planning committee: George Voxakis, community pharmacy and chairperson, Murhl Flowers, chain pharmacy, Alan Friedman, managed care pharmacy and Gary Smith, School of Pharmacy.

### **Regulation Update**

Assisted Living Regulation - Concerns were previously expressed regarding the Assisted Living Regulation which designates responsibilities for drug review to Nurses in some cases. David Denoyer reported that the Board has received comments from pharmacists that pharmacists should be involved in reviewing medication regimens for persons in assisted living for appropriateness. Comments from the practice committee were condensed and sent to Ms. Phinney, Regulations Coordinator for DHMH by Mr. Denoyer.

Code of Conduct - Board members reviewed the proposal which has been reformatted and changed in the Regulation .07 sexual misconduct sections. Commissioner Love stated that he liked paragraph .07 B, the last sentence which allows a pharmacist to pat someone on the shoulder, help a person who is upset or assist someone having trouble walking, without possible recourse under disciplinary action. Barbara Faltz Jackson moved, Jeanne Furman seconded the definition of terms as developed by Pamm Wiggin, section .01 and section .07 C(1). The motion to accept was unanimously approved.

The Board also reviewed proposed regulation .04 - Patient Privacy - this section has been changed by adding the appropriate code reference. Barbara Faltz Jackson motioned for

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acceptance seconded by Ray Love. The Full Board approved.

Ray Love moved for acceptance seconded by Melvin Rubin to change section .02 C(1) - Therapeutic Interchange - strike words "of a pharmaceutical equivalent".. All Board members are in favor and accepted. Barbara Faltz Jackson moved for acceptance seconded by Ray Love to strike words "of a pharmaceutical equivalent" in regulation .02 C(2) and strike after the word "has" and replace with established procedures for therapeutic interchange. The Full Board approved.

Rev. William Johnson moved for acceptance of the amended Code of Conduct as revised today, in final form, seconded by Donald Yee and approved by the Board.

Electronic Transmission Regulations COMAR 10.34.20- Mr. Denoyer reported that the Pharmacy Practice Committee recommends deleting .03B(2), which would require the pharmacist to assume some of the responsibility for security systems used in electronic transmission of prescriptions. This section was characterized as a repetition of the pharmacy permit holder's requirements. .

Laura Schneider moved to accept the regulation with the changes, including the deletion of .03 B (2), seconded by Barbara Faltz Jackson. All Board members were in favor.

Mr. Love suggested a further change, in section 03 A 1(a) - strike the words "the pharmacist dispenses" and replace with "employing" - also to change 03B2 - omit entire provision as discussed above and in 04A - omit current language and substitute with "mode by which prescription was received". Mr. Love also suggested an amendment to 04B - changed to read "date prescription was transmitted electronically if it differs from the date the prescription was written".

Raymond Love motioned to accept amendments seconded by Barbara Faltz Jackson. The Board was unanimously in favor of amendments.

Manufacturers and Distributors Fee Regulations Status - The regulations have been reviewed and approved by the Department and forwarded to the Department of Budget and Management and the Legislature for review. It is anticipated that new applicants will pay \$250.00, effective November 1, 1998 and the renewal fee will be waived this year.

Health Occupations - Boards - Project Reserve Fund proposed legislation would enable all Boards to set aside a reserve fund to use in situations when administrative or disciplinary actions must be funded immediately. It currently takes as long as six months to process a budget amendment to access Board reserve funds. A reserve fund would eliminate the lengthy budget amendment process for many items and enable Boards to pay invoices promptly for those items identified as

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approved for payment out in the project reserve fund as identified in the legislation.

Raymond Love moved to accept Project Reserve Fund legislation as proposed by the Counsel of Boards seconded by Ramona McCarthy Hawkins. The Board unanimously approved.

### **PEAC (Pharmacists Education and Assistance Committee) Update**

PEAC Representative's Report - Mr. Tony Tommasello reported that new students signed a pledge abstaining from drug and alcohol use while in the learning environment. Preceptors are appraised of probationary status. Any violation of the contract is referred to the student affairs committee. The student affairs committee sanctions the students. Mr. Tommasello will forward the student pledge to the Board for review.

Request for Proposal (RFP) Development - Norene Pease and Melvin Rubin have developed a RFP for a Rehabilitation Committee to assist the Board with monitoring pharmacists with problems associated with drug and alcohol misuse. A draft of the RFP was submitted to the DHMH contracts office for review and comment prior to its issuance.

### **Pharmacy Practice Committee - Stanton Ades**

Task Force on Pharmacy Support Staff - Melvin Rubin reported the first meeting will be on October 16th. He stated that a report would be given to the Board in January that could be used in the 1999 legislature. He anticipates that the report will describe the issues that the Task Force plans to consider and establish a time frame for making recommendations on any changes to statute or regulation.

Drug Formulary Advisory Committee - Status Report - Norene Pease reported that letters were drafted that will go to the appointed committee members. Secretary Wasserman indicated that he wants to attend the first meeting and address the committee. The committee will be comprised of representatives from BPQA, Board of Pharmacy, Medical Assistance and two representatives from the School of Pharmacy. Counsel to the Advisory Committee will be from the Office of the Assistant Attorney General.

Pharmacy Security - It was reported that the new proposal for changes in existing regulations will be discussed at the next Practice Committee meeting. Mr. Denoyer asked the Board to comment on the question of pharmacy security when the manager is in the store, with no floor to ceiling security, and the pharmacist is not present. Currently this situation is covered by the regulation, but new technology may allow electronic alarms which could protect the drugs. Mr. Denoyer also stated the Practice Committee discussed the question of whether alarms should be required. The Practice Committee will discuss this issue and make a recommendation on how to proceed.

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The next Practice Committee meeting will be on October 7th.

Development of a policy/regulation addressing the use of robotics in various pharmacy settings - NeighborCare Question from August - Mr. Denoyer reported that this matter was not discussed in the Practice Committee meeting and suggests a Board member field trip to Suburban Hospital to view the automated dispensing system and possibly schedule a trip to discuss the use of the technology for automated unit-dose cart filling in the long-term care setting.

### **Budget Committee**

Media Campaign MMA - Ms. Pease reported that a request for proposal (RFP) for the media campaign will be reissued this fall. A draft of the RFP has been submitted to the Contracts Office for review. Jeanne Furman suggested that the proposal be placed on the Internet so it could be downloaded by any party interested in bidding on it, and that proposals should be due on a Thursday instead of a Friday. It was also suggested to hold a pre-bid meeting to explain the RFP so the proposal would be more complete and understood. Ms. Pease suggests talking to the contracts department to see what they recommend since pre-bid meetings are not always necessary and can prolong the process.

Barbara Faltz Jackson stated that one more Board member is needed on the Review Committee for the Media Campaign. Howard Schiff, Executive Director of MPhA stated an interest in being on the oversight committee that reviews the public relations/health education materials for the Media Campaign.

F.Y. 2000 Budget Development - Ms. Pease reported that the Pharmacy Board budget request represents less than a 5% increase over the F.Y. 99 budget. Each Board was asked to submit a budget that represents an increase that is less than 5%. Several Boards have requested a larger increase to fund additional staff for the Boards and for the Office of the Assistant Attorney General.

Council of Boards - Barbara Faltz Jackson reported that two pieces of legislation pertaining to project reserve funds and setting of classification and grade levels for staff that were approved by the Board were discussed at the Council Meeting. The Council is planning a reception for members of the legislature in January to encourage them to understand the legislative proposals supported by the Council and to support the proposals with their positive vote.

### **Questions for the Board**

Past Inquiries



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Pfizer, Inc. - requested the Board's policy or dispensing laws regarding whether or not out-of-state or foreign prescriptions are valid in Maryland - Paul Ballard and David Denoyer will develop a response to be sent to Pfizer.

Licensure requirements for the Regional Cancer Center - David Denoyer reported that last month the Board discussed the issues regarding the Satellite Pharmacy and it was agreed that since this is a separate pharmacy location it would need a separate pharmacy license. Mr. Denoyer suggested that the issue of nursing homes services by hospital pharmacies is a matter the Board should research. The legal question which remains is whether this a hospital based facility, and thus exempt from prescription requirements? Considering hospitals with large campuses, how should the Board view pharmacies in separate buildings? It was suggested that Paul Ballard's legal intern will research this issue. Mr. Denoyer stated he will send a letter saying we are re-considering the issue of the Regional Cancer Center needing a separate license, but that the Board's impression from the written question is that a separate license is needed.

Dr. Frank Kasik - Drug delivery question - David Denoyer reported that his telephone inquiries indicated it is not legal in Delaware and Virginia to deliver drugs to a drop off point (depot), but it was not stated why. He feels this topic needs to be addressed, and it could be a security issue under the Pharmacy Practice Committee.

### **New Inquiries**

PEAC question - revision of renewal question number 1 - Paul Ballard suggests that the Board has discretion to change the wording on our pharmacist application. Melvin Rubin volunteered to reword the question and to send it to Mr. Ballard for review and comment.

### **Informational**

There were no discussions concerning informational materials.

### **Follow - Up Letters**

Mckesson Letter - Response to inquiry about patient compliance reminder letter program. - David Denoyer suggested discussions should be deferred until David Russo was in attendance, because of Mr. Russo's expertise and experience in this area. Mr. Denoyer did state that he dislikes the idea of an Opt-out program and this issue will be discussed at the District II meeting.

Mr. Lottier adjourned the public meeting at 12:23 P.M.

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Respectfully Submitted,

W. Irving Lottier Jr.  
Secretary